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12-1902-17835-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF LABOR AND INDUSTRY

In the Matter of George Simon Barr,
individually, and d/b/a GSB Construction
Management Services, and Schilem
Construction, Inc.

FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION

The above-matter came on for a hearing before Administrative Law Judge Steve M. Mihalchick on May 30, 2007 at 9:30 a.m. at the Office of Administrative Hearings, 100 Washington Square, Suite 1700, Minneapolis, Minnesota. The hearing record closed on May 30, 2007.

Christopher Kaisershot, Assistant Attorney General, Suite 1200, 445 Minnesota Street, St. Paul, MN 55101-2130, appeared representing the Department of Labor and Industry ("the Department"). George Simon Barr ("Respondent"), 11670 61st Avenue N., Plymouth, MN 55442, appeared on his own behalf.

STATEMENT OF ISSUES

Did Respondent violate Minn. Stat. § 326.84, subd. 1 and 1b, by engaging in unlicensed residential building contractor activity?

Did Respondent violate Minn. Stat. § 326.91, subd. 1(2), and Minn. R. 2891.0040, subp. 1.H., by failing to obtain the required building permits?

Did Respondent demonstrate financial irresponsibility in violation of Minn. Stat. § 326.91, subd. 1(12), by failing to satisfy the Krussow judgment?

Did Respondent violate Minn. Stat. § 45.027, subd. 1 and 1a, by failing to comply with the Department's Order to Appear?

Is discipline of Respondent in the public interest?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Respondent George Simon Barr does not hold a license in any capacity with the Department. Respondent operates GSB Construction Management Services,

Schilem Construction, Inc., and has held himself out as operating an entity known as Dan Bar Homes. None of these entities hold a license in any capacity with the Department.

2. Respondent had formerly operated G. Simon Construction Company, which held license No. 2677 as a Residential Building Contractor. That license was revoked pursuant to a consent order entered on February 13, 1995.^[1]

3. On June 4, 2004, Ione Alapsa of Fridley hired Respondent to construct a deck and install a patio door. Respondent's proposal for the job bore a stamp identifying the contractor as GSB Construction Management Services, a Division of Dan-Bar Homes, Ltd. and bearing a residential contractor license number.^[2] Alapsa paid Respondent \$4,460 for this work. The required permit was obtained from the City of Fridley with Dan Bar Homes, Ltd. listed as the applicant and identifying the valuation of the job as \$1,391.00.^[3] Alapsa informed Respondent that the work was not properly performed and some remained undone.^[4]

4. On September 22, 2004, the Department of Commerce issued a Consent Cease and Desist Order in which Respondent agreed to cease engaging in the work of a Residential Building Contractor, remodeler, or roofer until he complied with the statutes governing such work and obtained the required license.^[5]

5. On July 29, 2005, the Department received a complaint from Ms. Alapsa about Respondent's work on her 2004 deck and patio.^[6] The Department confirmed the complaint through an investigation. Ms. Alapsa filed a lawsuit against Respondent and obtained a judgment from Hennepin County Conciliation Court in June 2005 in the amount of \$5,055.00.^[7] The judgment has not been satisfied. Respondent does not agree that he should pay the full amount of the judgment, but has offered to pay \$2,500 in satisfaction of the judgment.^[8]

6. On June 25, 2006, Jessie and Melissa Baker of Anoka hired Respondent to install siding, windows and doors on their home. Respondent's proposal for the job identified the contractor as Schilem Construction. The Bakers made a deposit of \$1,200 and agreed to pay Respondent \$19,220 for this work.^[9]

7. Respondent twice give the Bakers a check to return their deposit. In both cases the check was either rejected for not sufficient funds or a stop order was placed on the check by Respondent.^[10]

8. The Department received a complaint from the Bakers about Respondent's failure to return their deposit.^[11] The Department confirmed the complaint through an investigation.

9. On November 12, 2005, a homeowner hired Respondent to install a garage slab in Afton, Minnesota. The contract was amended on December 17, 2005 to framing for the garage. Respondent's proposal for the job identified the contractor as GSB Construction Management Services.^[12]

10. Gina Kilgore of Northside Siding wrote to Dan Bartus of Dan Bar Homes that Respondent had subcontracted for the siding on the Afton job and that the work had not been paid for by Respondent. Kilgore identified \$2,730.00 for the siding and \$1,300.00 for a loan to pay workers as unpaid obligations of Respondent. Kilgore passed on this information to the Department when the obligations remained unpaid.^[13]

11. The Department issued an Amended Notice of and Order for Hearing, Order for Prehearing Conference, and Statement of Charges to Respondent on April 12, 2005. The Prehearing Conference occurred on May 26, 2005, at which time the Administrative Law Judge set the hearing for July 12, 2005.

12. On April 26, 2007, Respondent paid the Bakers \$1,455.00 in full payment of the amount owed to them.^[14]

13. Respondent issued two checks in the amounts of \$1300.00 and approximately \$2,780.00 to Northside Siding. These checks were postdated to allow Respondent to put sufficient funds into his account to cover the checks. At the time of the hearing, the two checks had not been presented for payment.

14. At the hearing, the Department agreed that Respondent could provide evidence regarding the successful payment of the undisputed debt to Northside Siding. Pursuant to that agreement, the ALJ agreed that posthearing evidence could be submitted directly to the Commissioner of Labor and Industry prior to the issuance of the Commissioner's final decision in this matter.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Commissioner of Labor and Industry and the Administrative Law Judge have jurisdiction in this matter under Minn. Stat. §§ 45.027, 326.91, and 14.50.

2. The Respondent was given timely and proper notice of the hearing in this matter.

3. The Department has complied with all procedural requirements of law.

4. The Department must prove by a preponderance of the evidence that the alleged violations occurred.^[15]

5. Minn. Stat. § 326.84, subds. 1 and 1b require a residential building contractor to be licensed. The Department has proved by a preponderance of the evidence that Respondent performed residential building contractor work without a license on the Alapsa, Baker, and Afton projects.

6. The Department has proved by a preponderance of the evidence that Respondent violated the 2004 Consent Cease and Desist Order by performing residential building contractor work activities on the Baker and Afton projects.

7. Persons performing residential contractor work are prohibited from engaging in fraudulent, dishonest, or deceptive practices, such as representing that they are licensed when they are not.^[16] The Department has proved by a preponderance of the evidence that Respondent engaged in fraudulent, dishonest, or deceptive practices by performing construction without a license, by undervaluing the amount of a job when obtaining the applicable local building permit, and by obtaining a building permit in the name of another.

8. Performing residential building contractor work negligently or in breach of contract is a violation of Minn. Stat. § 326.91, subds. 1(4) and 4. The Department has proved by a preponderance of the evidence that Respondent performed residential building contractor work negligently or in breach of contract on the Alapsa and Baker projects.

9. The Commissioner of Labor and Industry has authority to impose civil penalties against a person performing contracting work who has demonstrated untrustworthiness and financial irresponsibility.^[17] The Department has proved by a preponderance of the evidence that Respondent is financially irresponsible due to his failure to pay a judgment against him for his work on the Alapsa project. Respondent has demonstrated financial responsibility regarding the Baker project. Regarding Northside Siding, the record has been left open for the Commissioner's decision. In the absence of evidence that payment has been made, the Department has proved by a preponderance of the evidence that Respondent is financially irresponsible regarding the Northside obligation.

10. Discipline of Respondent is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED: That disciplinary action be taken against George Simon Barr.

Dated this 28th day of June 2007.

/s/ Steve M. Mihalchick

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Digitally Recorded, Session A-SMM-05302007, No Transcript Prepared.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Labor and Industry will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the Office of the Commissioner, Minnesota Department of Labor and Industry, 443 Lafayette Road, St. Paul, MN 55155 to learn the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. In order to comply with this statute, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

^[1] Ex. 1.

^[2] Ex. 4.

^[3] Ex. 6.

^[4] Ex. 3.

^[5] Ex. 2. On May 16, 2005, the Governor signed Executive Order 193, transferring the responsibility for regulation of residential building contractors and remodelers to the Commissioner of Labor and Industry from the Commissioner of Commerce.

^[6] Ex. 3.

^[7] Ex. 5.

^[8] Ex. 11; Testimony of Respondent.

^[9] Ex. 7.

^[10] Ex. 7.

^[11] Ex. 3.

^[12] Ex. 8.

^[13] Ex. 9.

^[14] Ex. 10. The additional amount over \$1,200.00 covered overdraft fees that they incurred. Testimony of Respondent.

^[15] Minn. R. pt. 1400.7300, subp. 5.

^[16] Minn. Stat. § 326.91, subds. 1(2), (4) and (13) and 4; Minn. R. 2891.0040, subp. 1C.

^[17] Minn. Stat. § 326.91, subds. 1(6).